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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/936,344 | 02/19/2002 | Pieter Lykle Buwalda | 294-108 PCT/US | 4155 |
| 7590 | 08/17/2004 | | EXAMINER | |
| Ronald J Baron Hoffmann & Baron 6900 Jericho Turnpike Syosset, NY 11791 | | | BHAT, NINA NMN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1764 | |

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|---------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/936,344 | BUWALDA ET AL. |
| | Examiner N. Bhat | Art Unit 1764 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 July 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-5,7-9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-5,7-9 and 11-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 July 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 7-6-04.
 - 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 - 5) Notice of Informal Patent Application (PTO-152)
 - 6) Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on July 6, 2004 has been entered.
2. Action on the merits of claims 1, 3, 4, 7, 8, 9 and 11-13 follows:
3. Applicant sent in an IDS by J. A. de Vries entitled "New Possibilities with Amylopectin Potato Starch" for consideration by the examiner. The examiner has considered this piece of art and accordingly a rejection based on this prior art follows:
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 5, 8-9 and 11-13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by de Vries.

deVries teach providing a genetically modified potato starch, which contains only amylopectin. The amylopectin developed by the genetically modified potato provides a high viscosity, high stability and new and different textures are possible when using this type of starch. The genetically modified potato, which creates the amylopectin potato

starch as taught by DeVries, does not differ from the conventional potato starch in size and shape of the starch granules. The amylopectin starch when used in heat-treated products provides a smooth texture, a shiny surface and a 'short' character. DeVries teaches that through sterilization the amylopectin potato starch granules fall apart into discrete fragments, which are sufficiently large to provide high viscosity and high stability. The amylopectin potato starch can be used in Liquid dairy products, soups and sauces and can withstand heat treatment/sterilization; soup powder and sauce powders; dessert powders such as puddings can include the amylopectin potato starch; Baker stuffings; meat and fish products; potato produces such as mashed potatoes and potato croquettes or in dry potato snacks and confectionery products can use the amylopectin potato starch as a thin boiling starch. The reference does teach and suggest a method for providing an improved foodstuff with short or smooth texture and/or shiny appearance after heat and/or shear treatment which includes adding a amylopectin potato starch having the capacity to disintegrate into discrete particles after processing.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 3, 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Vries.

de Vries teaches the invention substantially as claimed for reasons delineated above. However, de Vries does not teach that the starch is degraded or the amylopectin:amylose ratio as described. de Vries teaches that the potato starch is derived from a genetically modified potato to yield a potato starch, which contains only amylopectin. The potato starch may implicitly have a amylopectin:amylose ratio, which is 99:1 the reference infers there is no amylose however, the purity of the starch is not specifically disclosed. It would have been obvious to one having ordinary skill in the art, familiar in using starches in foods and knowledgeable in starches which have been genetically altered in order to provide a starch which is designed specifically to provide specific properties which would disintegrate into discrete particles when the food is subjected to heat which provide the properties of being short, smooth and shiny after the heat treatment this has been specifically suggested in the deVries reference and to provide the starch to be used as claimed by applicant is rendered obvious as whole to one having ordinary skill in the art at the time the invention was made.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Calderola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


N. Bhat
Primary Examiner
Art Unit 1764